

ENTERED

October 29, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

FREDERICK E REED,

Plaintiff,

VS.

OLUFOLAKE OGUNLADE, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:21-CV-129

ORDER ADOPTING MEMORANDUM & RECOMMENDATION

Before the Court is Magistrate Judge Jason Libby's Memorandum and Recommendation ("M&R"). (D.E. 18). The M&R recommends that the Court retain Plaintiff's Eighth Amendment claim of deliberate indifference against Defendant Ogulande in her individual capacity. The M&R also recommends that the Court dismiss with prejudice (1) Plaintiff's claims for money damages against Defendants Ogunlade and Guana in their official capacities as barred by the Eleventh Amendment, (2) Plaintiff's claim against the Texas Department of Criminal Justice ("TDCJ") as barred by the Eleventh Amendment, and (3) Plaintiff's deliberate indifference claim against Defendant Guana in his individual capacity for failure to state a claim. (D.E. 6).

The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge's M&R. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); General Order No. 2002-13. No objection has been filed. When no timely objection has been filed, the district court need only determine whether the Magistrate Judge's M&R is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989)

(per curiam); *Powell v. Litton Loan Servicing, LP*, No. CIV. A. H-14-2700, 2015 WL 3823141, at *1 (S.D. Tex. June 18, 2015).

Having carefully reviewed the proposed findings and conclusions of the Magistrate Judge, the filings of the parties, the record, and the applicable law, and finding that the M&R is not clearly erroneous or contrary to law, the Court **ADOPTS** the M&R in its entirety. (D.E. 18). Accordingly:

(1) The Court **RETAINS** Plaintiff's Eighth Amendment claim of deliberate indifference against Defendant Ogulade in her individual capacity. (D.E. 6).

(2) The Court **DISMISSES with prejudice:**

- a. Plaintiff's claims for money damages against Defendants Ogulade and Guana in their official capacities as barred by the Eleventh Amendment;
- b. Plaintiff's claim against the TDCJ as barred by the Eleventh Amendment; and
- c. Plaintiff's deliberate indifference claim against Defendant Guana in his individual capacity for failure to state a claim.

SO ORDERED.



DAVID S. MORALES
UNITED STATES DISTRICT JUDGE

Dated: Corpus Christi, Texas
October 30th, 2021